

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	: 10/529,968	Confirmation No. : 6272
First Named Inventor	: Christoph WEIS	
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Examiner	: Steven M. Cernoch	
Docket No.	: 105433.62118US	
Title	: Plumbing Outlet Fitting	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

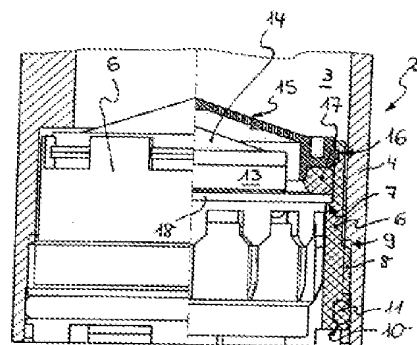
Sir:

The rejection of claims 15 and 41 for obviousness in view of the combination of Aghnides and Griffin should be withdrawn because Aghnides and Griffin each use elements other than the claimed intermediate holder (6) to hold an insertion cartridge in an armature outlet. As a result, the rejection is based on an interpretation of Aghnides and Griffin that is not consistent with an interpretation that would have been provided by one skilled in the art, the rejection is based on reasoning that would not have motivated one skilled in the art to have combined Aghnides and Griffin, and the combination of Aghnides and Griffin would not result in a device with the claimed intermediate holder (6).

I. Aghnides and Griffin Do Not Use the Claimed Intermediate Holder (6) to Hold an Insertion Cartridge in an Armature Outlet

A. Appellants' Claimed Intermediate Holder

Appellants' claims 15 and 41 recite a hollow, cylindrical sleeve-shaped intermediate holder (6) that holds an insertion cartridge (5) in a single fixed position in a fitting outlet (4) of an outflow armature (2). An example of this arrangement can be seen in Fig. 1 of the present application (reproduced on the right).¹ The claimed intermediate holder (6) effectively acts as an adapter allowing any suitable cartridge to be used, which reduces costs by allowing for bulk purchases of cartridges that can be used in different armatures of different manufacturers.

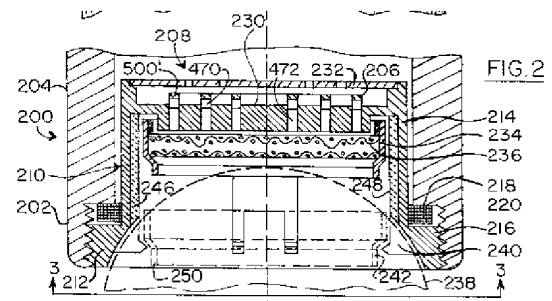


Instead of employing an intermediate holder (6) to hold an insertion cartridge (5) in an armature outlet, Aghnides provides threads on the insertion cartridge itself and Griffin employs an outer housing with threads.

¹ Reference numeral 6 on the upper left-hand side of this figure should be reference number 5.

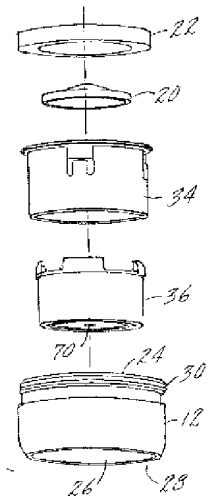
B. Aghnides' Aerator Includes Threads to Hold the Aerator in Place

As illustrated FIG. 2 of Aghnides (reproduced on the right), concealed aerator 208 includes threads on tubular length 212 that engage with corresponding threads of spout 200. Thus, in Aghnides the threads of aerator 208 hold the aerator in the spout 200, and not the claimed intermediate holder (6).



C. Griffin Employs an Outer Housing 28 with Threads to Hold the Aerator in Place

Griffin discloses an exposed aerator that is held outside of the spout using an external housing. Specifically, referring now to FIG. 2 of Griffin (reproduced on the right), aerator 10 (which includes an elastomeric ring 22, screen 20, upper throttle member 34, lower throttle member 36) is held in place using engaging threads 30 of outer housing 12. Accordingly, Griffin uses an outer housing 12, and not the claimed intermediate holder, to hold aerator 10 in place. By employing outer housing 12, Griffin does not require the claimed intermediate holder (6). In contrast to the concealed aerator of Aghnides, the use of the exposed cartridge of Griffin has many disadvantages, including the high expense of jointly grinding, polishing and chroming or painting of the outer housing and the faucet.



Because Aghnides employs threads on the cartridge itself to hold the cartridge in the faucet and Griffin requires an outer housing to hold the cartridge in the faucet, even if one skilled in the art were motivated to combine Aghnides and Griffin, the combination would not disclose or suggest the an intermediate holder (6) that holds an insertion cartridge (5) in an armature fitting outlet.

D. The Location of the Threads in Aghnides and Griffin Does Bear on the Rejection of Claims 15 and 41

The Advisory Action asserts that the position of the threads in Aghnides and Griffin “holds no bearing on any intermediate holder used to **enclose** the insertion cartridge.”² Claims 15 and 41 require that the “insertion cartridge (5) ... is **held** in a single fixed position”³ in the fitting outlet (4) by the intermediate

² Advisory Action at page 2. (Emphasis added).

³ Emphasis added.

holder. Thus, in both Aghnides and Griffin the location of the threads bears on which element is holding the aerator in place, and is significant in evaluating whether the combination of Aghnides and Griffin renders Appellants' claims obvious.

II. One Skilled in the Art Would Not Have Interpreted Components of Aghnides' and Griffin's Aerators in the Same Manner as the Office Action

The person of ordinary skill in the art would not have interpreted *a single component* of Aghnides' aerator as the claimed insertion cartridge and *a single component* of Griffin's aerator as the claimed intermediate holder. Instead, the skilled artisan would have interpreted the entirety these aerators as insertion cartridges.

The term cartridge clearly denotes an assembly of components, and not a single component. In contrast, element 214 of Aghnides, cited for the disclosure of the claimed insertion cartridge, is a second tubular length of the concealed aerator 208.⁴ One of ordinary skill in the art would not have interpreted a solitary tubular member as an insertion cartridge. Instead, one skilled in the art would have interpreted the entire aerator 208 as an insertion cartridge.

Because the skilled artisan would have interpreted the entirety of Aghnides aerator as an insertion cartridge, the skilled artisan would not then have considered a single component of Griffin's aerator (i.e., upper throttle member 34) as a component separate from the aerator. As such, one skilled in the art would at best interpret upper throttle member 34 as a component of the claimed insertion cartridge (5) and not as the claimed intermediate holder (6). Accordingly, the combination of Aghnides and Griffin at best discloses two insertion cartridges, but not the claimed intermediate holder (6).

Instead of providing any evidence to support these interpretations, the Advisory Action states that these interpretations "were done in a way that was thought to best represent what the examiner was trying to convey." Claim interpretation, however, must be consistent with the specification⁵ and the interpretation that those skilled in the art would reach.⁶ There is simply no evidence in the record that one of ordinary skill in the art would have interpreted

⁴ See, for example, column 5, lines 53-58.

⁵ M.P.E.P. § 2111, citing *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005).

⁶ M.P.E.P. § 2111, citing *In re Cortright*, 165 F.3d 1353, 1359 (Fed. Cir. 1999).

one component of Aghnides' aerator as an insertion cartridge and one component of Griffin's aerator as not part of an insertion cartridge.

III. One Skilled in the Art Would Not Have Combined Aghnides and Griffin for the Reasons Set Forth in the Office Action

The Office Action's stated motivation to incorporate Griffin's upper throttle member 34 into Aghnides' aerator is "to enclose aerator elements". The Office Action has not explained why the skilled artisan would want to enclose the entirety of Aghnides' aerator with a component of Griffin's aerator. A skilled artisan typically modifies things for some type of advantage, and not merely because the modification could be made.

This, however, appears to be exactly the basis of the combination of Aghnides and Griffin because the newly presented reasoning in the Advisory Action would result in Griffin's upper throttle member 34 having no use in Aghnides' aerator. The Advisory Action states that the Aghnides and Griffin are being combined by interposing Griffin's upper throttle member 34 between Aghnides' aerator 208 and threaded member 210. Griffin's upper throttle member 34 engages in lower throttle member 36 as part of a throttle assembly 14 that can change the air content and appearance of the water stream.⁷ There is no evidence that enclosing Aghnides aerator 208 with Griffin's upper throttle member 34 would be able to change the air content and appearance of the water stream. As such, it appears that the proposed modification adds a part (i.e., Griffin's upper throttle member 34) that would serve no purpose in the aerator of Aghnides. The skilled artisan typically is not motivated to add components that serve no purpose, and the Patent Office has not provided any explanation of why the skilled artisan would have done so.

It appears that this combination is being proposed for the sole purpose of supporting the rejection and not based upon a reason that would have motivated a person of ordinary skill in the art. Indeed, the Advisory Action states that the reason Griffin's upper throttle member 34 is being interposed between Aghnides' aerator 208 and threaded member 210 is "in an effort to not destroy both references". The person of ordinary skill in the art does not combine references in a manner to avoid destroying them, but instead this person typically combines

⁷ See, for example, paragraphs 0004 and 0029, and Fig. 2 of Griffin.

references to achieve some type of advantage, or at least to provide some type of functionality. Again, the Patent Office has not identified any advantage or functionality that would be achieved by combining Aghnides and Griffin in the various manners proposed by the Patent Office.

IV. The Combination of Aghnides and Griffin Would Not Result in a Device with the Claimed Intermediate Holder (6)

Even if one skilled in the art were motivated to combine Aghnides and Griffin, the combination would not result in the claimed invention. Specifically, Griffin's upper throttle member 34 is disclosed as being part of an aerator that allows for adjustment of the flow by rotating the lower throttle member 36. Thus, incorporating Griffin's upper throttle member 34 into Aghnides' concealed aerator would result in a concealed, adjustable aerator with threads on the outside of the aerator, such as on the outside of upper throttle member 34. Such an arrangement would still just involve an aerator that engages itself into the faucet and would not involve the claimed intermediate holder.

Alternatively, if threads were not provided on the outside of Griffin's upper throttle member 34, then the resultant device would require Griffin's outer housing 12 to attach the aerator to the faucet housing. This combination would not result in a substantially concealed aerator, and accordingly would not involve "at least a predominant portion of a longitudinal extension of the insertion cartridge [*being*] received within the fitting outlet (4)" as required by claims 15 and 41.

Finally, if as proposed in the Advisory Action, Griffin's upper throttle member 34 is being interposed between Aghnides' aerator 208 and threaded member 210, then Aghnides threaded member 210 would hold the aerator in the faucet outlet, and not Griffin's upper throttle member. Again, this would not involve the claimed intermediate holder (6).

V. Conclusion

For at least those reasons set forth above, the rejection of claims 15 and 41 should be withdrawn.

February 23, 2010

Respectfully submitted,

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